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Amendment and Request for Reconsideration

REMARKS

In the pending Office Action mailed December 28, 2004, the Examiner rejected Claims 1-12, 16-18, 23-40, 44-46, 51-68, and 72-74 under 35 U.S.C. § 102(e) as anticipated by Sahai and rejected Claims 13, 14, 19-21, 41, 42, 47-49, 69, 70, and 75-77 under 35 U.S.C. § 103(a) as obvious over Sahai in view of Lipa, and rejected Claims 15, 22, 43, 50, 71, and 78 as obvious over Sahai and Lipa in view of Hubbard. The independent claims (Claims 1, 16, 30, 44, 58, and 72) have been amended to define over the cited references, and Claims 13, 41, and 69 have been amended for greater clarity under Section 112. Reconsideration and further examination of this application are respectfully requested.

<u>Claim Rejections under 35 U.S.C. § 102</u>

The Examiner rejected Claims 1-12, 16-18, 23-40, 44-46, 51-68, and 72-74 as anticipated by U.S. Patent No. 6,061,722 to Sahai. Each of the independent claims was rejected as anticipated by Sahai. It is submitted that the independent claims contain limitations that are not disclosed by Sahai.

The Sahai patent is concerned with efficient transfer of streaming media from a server after a client requests content from the server (see column 2, lines 54-64). For a given multimedia content file requested by a client, the server determines the client device capabilities, determines an independent combination of file and streaming parameters, and streams the requested file to the client (col. 6, lines 12-49). Thus, the Sahai system <u>responds to a request for a selected file</u> and gives wide discretion to a content server to <u>freely adjust combinations of content delivery parameters</u> to match user capabilities and stream the data.

In contrast, the claimed invention is directed to <u>predefined service levels</u> that set combinations of different transfer parameters, including capability parameters such as user hardware, tolerable latency, and network speed. See, for example, Table 1 at page 21 of the application. Table 1 defines five different service levels that are

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available to a user. The predefined service levels of the claims are not produced <u>in</u> <u>response to a client request</u> for a selected file, as in Sahai. Rather, the present invention is directed to preserving the best possible presentation of content, to optimize content transfer over the network (see page 7, lines 21-22). To accomplish this, the predefined service levels allow specific trade-offs to be made by the content provider in advance of delivery so that the user experience is more accurately known prior to selection and prior to transmission of the content (see page 21, lines 1-3). For example, the specification notes that the available service levels can be determined even before the user selects or requests content (see page 22, lines 5-9 and Fig. 7 and accompanying description). That is, the "predefined" levels relate to service levels that are <u>defined before receipt of the user request for content</u>. Sahai does note determine parameters for streaming delivery of content until <u>after</u> the request for content is received and the particular user capabilities are determined.

Claim 1 of the pending application recites:

determining capabilities of the user device to download content over the network and to process content received over the network based upon the user device information;
automatically selecting a service level that is <u>selected from among</u> <u>a plurality of predefined service levels</u> and is determined to be available to the user device for transferring content thereto based upon the determined capabilities of the user device, wherein the selected service level is associated with one or more characteristics of content for transfer to the user device.

All of the independent claims, as amended, contain similar limitations and are directed to automatic selection from among <u>predefined service levels</u>. Therefore, Sahai does not anticipate any of the claims, nor any of the claims dependent therefrom.

It is further noted that none of the rejected dependent claims is anticipated by Sahai. For example, Claim 2 depends from Claim 1 (which is not anticipated by Sahai) and further recites the additional operations of receiving a request for content and causing content to be transferred according to the selected service level. Thus, Claim 2

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requires the selected service level for transfer of content to be selected from among the predefined service levels, unlike Sahai, which selects independent combinations of streaming parameters from among choices after the request has been received (col. 6, lines 12-49).

<u>Claim Rejections under 35 U.S.C. § 103</u>

The Examiner rejected Claims 13, 14, 19-21, 41, 42, 47-49, 69, 70, and 75-77 under 35 U.S.C. § 103(a) as obvious over Sahai in view of Lipa, and rejected Claims 15, 22, 43, 50, 71, and 78 as obvious over Sahai and Lipa in view of Hubbard. It is submitted that neither Lipa nor Hubbard makes up for the deficiencies of Sahai.

The claims rejected as obvious all depend directly or indirectly from one of the claims addressed above in the Section 102 discussion. As noted above, Sahai gives wide discretion to a content server to <u>freely adjust content delivery parameters</u> to match user capabilities <u>after</u> a request for content is received, whereas the independent claims recite <u>predefined service levels</u> that set combinations of different transfer parameters according to user capabilities. Thus, Sahai does not show all of the recited features of the independent claims. Further, it is submitted that there is no prima facie case for obvious in the proposed combination of Sahai with Lipp and Hubbard. The proposed combination, even if carried out, would not provide the claimed invention. That is, the addition of Lipa and Hubbard does not overcome the deficiencies of Sahai, and therefore the claims are not rendered obvious in view of any of the combinations.

The proposed combination would not provide the recited invention. Sahai relates to content server setting of streaming parameters after receiving a request for a content file. Lipa merely provides notification that a user's hardware capabilities are deficient. Hubbard relates to indexing content at a network site. None of the cited references relates to selection of a service level that is selected from among a plurality of <u>predefined service levels</u>. Moreover, with respect to the rejected dependent claims, none of the cited references relates to determining an upgrade that could provide a different service level, and none relates to providing notification to that effect.

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Amendment to Claims 13, 41, and 69

Claims 13, 41, and 69 were amended to make it clear that the claim relates to processing in accordance with capabilities requirements of the first service level, not requirements of the user device.

New Claims 86-89

New claims 86, 87, 88, and 89 have been added. These new claims all specify that the selecting of a service level is performed at a network service manager device independent of a network provider from which the content is transferred. This feature is described in the specification at page 9, lines 15-22 with reference to Figure 1 (service manager device 115 functions as intermediary between user device 110 and content provider device 120).

Conclusion

Applicant respectfully submits that all the non-allowed now-pending claims in the application, Claims 1-36, and 43-54 are patentably distinct and over Gitlin, and are in condition for allowance. Reconsideration and further examination of the application are requested. A Notice of Allowance is solicited.

Respectfully submitted,
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